IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 3929 of 2006()

[CRIME NO.433/06 OF E.T.SOUTH POLICE STATION]

PETITIONER: IST ACCUSED:

DR.RAMESH CHANDRA SWAIN,
AGED 54, S/O.KSHETRA BASI SWAIN, ADHUNGAT,
SINGALO VILLAGE, BHAGABANPUR POST,
KUNDRAPRA, ORISSA.

BY ADV. SRI.P.V.GEORGE(PUTHIYIDAM)
SRI.M.J.SANTHOSH

RESPONDENTS:

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1. STATE OF KERALA (SUB INSPECTOR OF
POLICE, E.T.SOUTH POLICE STATION) REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUPERINTENDENT,
SUB JAIL, ERNAKULAM.

DIRECTOR GENERAL OF PROSECUTIONS SRI.P.G.THAMBI
APPEARD ON BEHALF OF THE STATE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3929 OF 2006

Dated this the 1st day of December, 2006.

ORDER

The grievance of the petitioner, allegedly a person having permanent residence in Orissa and allegedly a Medical Doctor by profession, is that he, who was arrested and taken into custody on 15.10.2006 in Crime No.433 of 2006 of Ernakulam Town South Police Station, inter alia, for the offences punishable under Sections 420 and 468 I.P.C, is not being given the necessary medical attention. He complains that he was seen by the doctor concerned on 24.11.2006 & 25.11.2006. He was referred for urology consultation as per the O.P ticket issued from Medical College, Trichur on 25.11.2006. He has not been taken for such consultation on the specious plea that there is no police escort available.

2. The petitioner's counsel had filed an application before the learned Magistrate, who remanded him to custody for necessary directions to make medical facilities available to him. That petition is seen rejected by the learned Magistrate by order dated 28.11.2006. The said order reads as follows:

> "This Court has no authority to give direction to police to provide escort to the accused. Petition dismissed."

A detailed order is also seen to have been passed, evidently later. The learned Public Prosecutor was directed to take instructions. As there was no effective representation, the learned D.G.P was directed to take instructions. I have heard the learned counsel for the petitioner and the learned D.G.P today.

3. I must say that no satisfactory reasons have been shown to exist as to why the petitioner has not been given the requisite medical attention as ordered in the O.P ticket dt.25.11.2006. The learned D.G.P submits that in many cases, influential persons pretend illness in order to secure admission to the hospital and to avoid detention in prison. If the instant one is a case, where the petitioner is trying to avoid the discomfiture in prison and undeservedly get the cosy comforts in the hospital, this stand would have been justified. But unfortunately, there is no specific assertion by anyone that the petitioner is only pretending illness. If really he is ill, he is entitled to medical attention. While in custody, he cannot himself evidently avail the requisite medical assistance.

Competent medical assistance has to be provided for him by the State who is detaining him in custody.

4. I am not in these circumstances satisfied, with the attitude shown by the learned Magistrate. If the Magistrate has the power to take him into custody, he inevitably has the duty also to insist that the petitioner is dealt with humanely while in custody. The respondent, Superintendent of Prison is directed forthwith get necessary medical attention available to the petitioner. If it is the case of the 2nd respondent, the Superintendent of Prison that the petitioner is having no illness, specific statement to that effect along with materials to support that conclusion shall be filed before this Court on 04.12.2006. If such materials are not there, I expect the 2nd respondent, Superintendent of Prison to immediately make the requisite medical attention available to the petitioner. The statement of the 2nd respondent shall be filed on 04.12.2006.

5. Call on 04.12.2006. The learned D.G.P shall communicate this direction forthwith to the 2nd respondent.

(R.BASANT, JUDGE)

rtr/